



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
CAMUEL CROSS,)	
Complainant,)	
)	CHARGE NO: 1996CF3061
and)	EEOC: 21B962531
)	ALS NO: 9947
BOARD OF EDUCATION OF THE)	
CITY OF CHICAGO and CHARLES)	
VIETZEN,)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondents' Motion for Summary Decision based on the Affirmative Defenses of *res judicata* and *collateral estoppel*. A Memorandum in Support of the Motion was filed by Respondents along with exhibits attached. Complainant filed a Response to the Motion and the Respondent filed a Reply. The motion is ripe for decision.

CONTENTIONS OF THE PARTIES

Respondents contend that this matter should be dismissed as a matter of law because Complainant's Complaint is barred by the Doctrines of *res judicata* and *collateral estoppel*. Respondents contend that the identical matter was litigated on the merits in the federal court where a final judgment was rendered against the Complainant.

The Complainant contends that the doctrines of *res judicata* and *collateral estoppel* provide that a party is precluded from filing a second action or starting a new proceeding that arises out of the same controversy from the first action. The Complainant argues that the Human Rights Commission case was filed prior to the federal case, thus

the doctrines do not apply in this instance. Complainant further contends that the issues in the two cases differ in that the federal case involves the issue of retaliation while the Human Rights Commission case does not. Complainant also argues that both cases contain different prayers for relief.

FINDINGS OF FACT

1. On May 9, 1997, Complainant filed a Complaint with the Illinois Human Rights Commission against the Respondents alleging sexual harassment.

2. The Human Rights Commission Complaint alleged that from about March 26, 1996 through May of 1996, the Respondent Charles Vietzen, an employee of Respondent Board of Education of the City of Chicago, sexually harassed Complainant by touching him in an unwelcome sexual manner and verbally harassing him by making sexual remarks.

3. On December 30, 1998, Complainant filed a second complaint of sexual harassment in the U.S. District Court for the Northern District of Illinois under Case Number 98 C 8416.

4. In the federal action, Complainant alleged that Respondent Charles Vietzen touched him in a sexually suggestive manner, told him sexually explicit jokes and subjected him to various forms of sexual harassment and retaliation for opposing sexual harassment and discrimination.

5. On February 4, 1999, Complainant filed a Motion to Stay Proceedings in the Commission because of the federal action.

6. On February 22, 1999, the Commission granted Complainant's Motion to Stay Proceedings.

7. On September 30, 1999, the Respondents filed a Motion for Summary Judgment and a Supporting Memorandum of Law in the federal action.

8. On November 15, 1999, the Complainant filed his Response to the Respondent's Motion for Summary Judgment in the federal action.

9. On January 4, 2000, the Honorable Ruben Castillo granted the Respondents' Motion for Summary Judgment. Judgment was entered in favor of the Respondents and against the Complainant and the federal action was dismissed with prejudice.

10. The Respondents filed a timely motion to amend their Answer and Affirmative Defenses to include the doctrines of *res judicata* and *collateral estoppel*, and subsequently filed a Motion for Summary Decision with the Commission on March 13, 2000.

11. The Illinois Human Rights case is identical to the federal action. Therefore, the federal ruling collaterally estops the Commission from proceeding forward because of the application of the doctrine of *res judicata*.

12. The Respondents are entitled to Summary Decision as a matter of law due to the doctrines of *res judicata* and *collateral estoppel*.

CONCLUSION OF LAW

The Illinois Human Rights Commission is collaterally estopped from proceeding in this matter because the Complaint is barred by the doctrines of *res judicata* and *collateral estoppel*, in that the Human Rights case and the federal action involve similar facts and issues which were resolved by a final judgment on the merits in the federal action.

DETERMINATION

Respondents' Motion for Summary Decision based on the Affirmative Defenses of *res judicata* and *collateral estoppel* should be granted because the Commission is collaterally estopped from proceeding with this matter which was already litigated and decided by a federal court, thus making the matter *res judicata*.

DISCUSSION

Section 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. Cano v. Village of Dolton, 250 Ill App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1st Dist. 1993).

The issue in this case is whether the federal court's Summary Judgment based upon the same set of facts in the instant case is *res judicata*. The doctrine of *res judicata* provides that a final judgment on the merits prevents the same parties from relitigating the same claim, demand or cause of action in a subsequent action. Goodwin v. United Food & Commercial Workers Union Local No. 550-R, 30 Ill. HRC Rep. 64 (1987), citing Towns v. Yellow Cab Co., 73 Ill.2d 113, 382 N.E.2d 1217, 22 Ill.Dec. 519 (1978). Once a judgment has been entered upon a cause of action, the parties cannot attempt to relitigate that cause of action on any grounds.

In order to determine whether *res judicata* applies, three elements must be met: the parties in the present action must be the same or in privity with the parties in the first action; the cause of action in both cases must be the same; and a decision on the merits must have been made in the earlier case. Housing Authority for LaSalle County v. Young Men's Christian Association of Ottawa, 101 Ill.2d 246, 461 N.E.2d 959 (1984).

The first requirement is easily met; the parties in both cases are the same. The Complainant and the Respondents in this instant case litigated the case before the Federal Court. The Board of Education of the City of Chicago and Charles Vietzen, and Camuel Cross were Defendants and Plaintiff, respectively, in the federal matter.

The second requirement states that the cause of action must be the same in both cases. One method of determining the similarity of causes of action is to examine the facts of each case. If the same set of facts provide the basis for both claims, then the cause of action is the same. Smith v. City of Chicago, 820 F.2d 916 (7th Cir. 1987).

The Complainant stated in his federal Complaint that he filed a timely charge of employment discrimination based upon sexual harassment with the Illinois Department of Human Rights, and that the same charge was cross-filed with the Equal Employment Opportunity Commission (EEOC). The Complainant requested and received a Notice of Right to Sue from the U.S. Department of Justice and he then filed the federal case. The federal case alleges employment discrimination based upon sexual harassment by the Respondents toward the Complainant. The same core facts that gave rise to the federal suit underlie the sex discrimination claim that the Complainant attempts to assert before the Commission. Since the core set of facts that give rise to the federal suit are the same core facts that underlie the instant case, the cause of action is the same.

The crux of Complainant's argument against Respondent's motion is that the doctrines of *res judicata* and *collateral estoppel* pertain only to any causes of action that are filed subsequent to the filing of an initial cause of action. Complainant argues that since the Commission action was filed prior to the federal case, the doctrines do not apply to the instant case. Complainant has failed to cite any case law to support this contention. Even taking Complainant's contention as *arguendo*, it must fail because of the fact that it was Complainant who requested and received a Stay of Proceedings from the Commission in order to pursue his cause of action at the federal level instead of at the Commission. This in effect made the federal matter the *first* cause of action that was ultimately heard. Thus, the Commission matter in actuality is the second cause of action that followed.

Complainant further argues that the causes of action for each case differ because the federal case alleged a charge of sexual harassment and retaliation, while the Commission case only alleged a charge of sexual harassment. This argument is without merit because the Commission has no jurisdiction over a charge of retaliation and the facts do not change the sexual harassment cause of action found in both cases.

The third requirement under the *res judicata* doctrine is that a final disposition has to be reached in the first case to bar the complainant from bringing another case. The federal court granted the Respondent's Summary Judgment Motion in the *first* case. A Summary Judgment constitutes a Judgment on the Merits. Webster v. Spraying Systems Co., ___ Ill. HRC Rep. ___, (Charge No. 1985CF1738, July 26, 1991).

It should be noted that there is no requirement regarding prayers of relief to be similar in each of the cases.

CONCLUSION

Section 8-106.1 of the Human Rights Act provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 883 (1st Dist. 1993). 56 Ill.Admin. Code §5300.530 (b) and §5300.730 of the Procedural Rules of the Commission provides that the Administrative Law Judge has authority to hear any proper motions or objections, including motions to dismiss.

It is clear that all three requirements have been met. The parties are the same in this case as in the federal case, the cause of action at issue in both cases is the same, and the federal court made a determination in the earlier case based upon the merits. Therefore, the instant case is barred by the doctrines of *res judicata* and *collateral estoppel*.

RECOMMENDATION

I recommend that this matter be dismissed with prejudice because this matter is barred by the doctrines of *res judicata* and *collateral estoppel*.

HUMAN RIGHTS COMMISSION

BY: NELSON E. PEREZ
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: February 27, 2001